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October 10, 2013

**VIA ECF**

The Honorable Denise L. Cote  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1610  
New York, NY 10007-1312

Re: FHFA v. Merrill Lynch & Co., Inc., et al., No. 11-cv-6202

Dear Judge Cote:

We write on behalf of the Federal Housing Finance Agency ("FHFA") to respectfully request this Court to compel individual defendant Matthew Whalen to sit for a two-day deposition in the above-referenced action.

Mr. Whalen is a key witness in FHFA's action against the Merrill Lynch Defendants ("Merrill Lynch"). At a minimum, he ran the banking and structuring aspects of Merrill Lynch's mortgage-backed securities business from 2002 until he was let go in 2007.<sup>1</sup> Unlike many individual defendants who signed registration statements but were not otherwise involved in the day-to-day operations of the business, Mr. Whalen was directly involved on a day-to-day basis as a senior manager of key aspects of the securitization process, including selecting the loans to be included in securitizations, working with ratings agencies to size bonds, pricing deals, and managing Merrill Lynch's balance sheet risk related to the RMBS business.

Mr. Whalen is an individual defendant, and FHFA is therefore entitled to depose him for one day without using one of its allotted twenty two-day depositions of employee and former employee fact witnesses. (Amended Order Regarding Deposition Protocol, Dkt. # 452, at 6.)

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<sup>1</sup> Organization chart showing Mr. Whalen's key managerial role (Exhibit 1).

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Because of his central position in the case, FHFA has elected to use one of its allotted twenty depositions to depose Mr. Whalen for two days. In response, Mr. Whalen has taken the position that he will not sit for a two-day deposition unless FHFA drops its claims against him as an individual defendant.<sup>2</sup> Mr. Whalen has confirmed that he will not change his position, and the parties are therefore at an impasse.<sup>3</sup>

FHFA respectfully requests that the Court compel Mr. Whalen to sit for a two-day deposition at a mutually convenient date prior to the December 6, 2013 fact discovery cut-off.

Respectfully submitted,

/s/ Manisha M. Sheth

Manisha M. Sheth

cc: Counsel of record

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<sup>2</sup> October 2, 2013 email from Matthew Riccardi to Tyler Whitmer (Exhibit 2).

<sup>3</sup> October 9, 2013 email from Matthew Riccardi to Tyler Whitmer (Exhibit 2).